IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1216 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAHIMBHAI ISMAILBHAI KAPADIA

Versus

MUSTAFABHAI USMANBHAI ALAD

Appearance:

1. Civil Revision Application No. 1216 of 1997

MR PV HATHI for Petitioner No. 1-2/3

MR HM PARIKH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/02/2004

ORAL JUDGEMENT

The applicants herein are the original defendants of Regular Civil Suit No.498 of 1995, which is pending in the court of the learned Civil Judge (SD) at Nadiad. The said suit has been filed by the present respondent herein. In the aforesaid suit on behalf of the respondent herein by way of application for interim injunction it is prayed that the defendants may be

restrained from interfering with the right of the plaintiff of passing through the disputed property. The learned trial Judge rejected the said application by his order dated 15th April, 1997.

2 The original plaintiff has thereafter filed Civil Misc. Appeal No.133 of 1997 in the court of the learned District Judge, Kheda at Nadiad. The learned Joint District Judge by his order dated 21st July, 1997 allowed the appeal and granted the injunction prayed for by the plaintiff in the original suit. The said order is challenged by way of this revision application by the original defendants. It is required to be noted that the order in question is interlocutory in nature as the same is filed during the pendency of the suit. By way of the amendment in Section 115 of the Civil Procedure Code the revision against such an interlocutory order is not maintainable. In that view of the matter, this revision application is not required to be entertained and the same is disposed of as not maintainable. Rule is discharged.

3 The learned advocate for the respondent even on merits has submitted that it cannot be said that the appellate court has committed any jurisdictional error. However, since the revision application is not maintainable, I am not examining the said aspect. It is clarified that it will be open for the applicants to prefer Special Civil Application under Article 227 of the Constitution of India challenging the impugned order of the appellate Judge.

(P.B. Majmudar, J.)
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